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No. 84-1513

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Office - Supreme Court, U.S.
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JUN 28 1985
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1984

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

DANTE CARLO CIRAULO,

Respondent.

On Writ Of Certiorari To
The California Court of Appeal,
First Appellate District

JOINT APPENDIX

JOHN K. VAN DE KAMP
Attorney General of the
State of California
STEVE WHITE
Chief Assistant Attorney
General
EUGENE W. KASTER
Deputy Attorney General
*LAURENCE K. SULLIVAN
Deputy Attorney General
6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-3653

KRAUSE, BASKIN, SHELL, GRANT
& BALLENTINE
*MARSHALL W. KRAUSE
Wood Island, Suite 207
60 E. Sir Francis Drake Blvd.
Larkspur, CA 94939
Telephone: (415) 461-4100

PAMELA DUNCAN
Post Office Box 98
Santa Cruz, CA 95063
Telephone: (408) 479-1045

Attorneys for Petitioner

Attorneys for Respondent

*Counsel of Record

10 pp
addendum

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CHRONOLOGICAL LIST OF RELEVANT
DOCKET ENTRIES

The People of the State of California

v.

Dante Carlo Ciraolo

Santa Clara County Municipal Court
No. D8231923

Santa Clara County Superior Court
No. 88043

California Court of Appeal (1st App.
Dist., Div. 5) No. A026048

Santa Clara County Municipal Court
No. D8231923

October 13, 1982 Felony Complaint
Filed

April 27, 1983 Preliminary
Examination

Santa Clara County Superior Court
No. 88043

May 9, 1983 Felony Information
Filed Plea Entered,
"Not Guilty"

July 12, 1983 Motion To Suppress
Evidence Filed

July 15, 1983 Motion to Suppress
Augmented With Search
Warrant and Search
Warrant Affidavits

2.

August 4, 1983	Opposition to Motion to Suppress Filed
August 8, 1983	Amended Felony Information Filed Plea Entered, "Not Guilty"
August 15, 1983	Hearing On Motion To Suppress Evidence
	Preliminary Hearing Transcript, Search Warrant and Search Warrant Affidavit Received In Evidence
	Motion Taken Under Submission
August 30, 1983	Order Denying Motion To Suppress Filed
October 4, 1983	Ciraolo Changes Plea To Guilty Of Marijuana Cultivation
November 9, 1983	Sentencing Probation Granted
December 20, 1983	Probation Order Filed
January 6, 1983	Notice Of Appeal Based Upon Denial Of Suppression Motion Filed

3.

	California Court of Appeal (1st App. Dist., Div. 5) No. A026048
April 17, 1984	Ciraolo Opening Brief Filed
May 23, 1984	California Brief Filed
June 12, 1984	Ciraolo Reply Brief Filed
July 31, 1984	Case Argued
November 20, 1984	Opinion and Judgment Filed Reversing Conviction
December 5, 1984	California Petition For Rehearing Filed
December 10, 1984	Order Denying Petition For Rehearing Filed
December 31, 1984	California's Petition For Hearing in California Supreme Court Filed
January 8, 1985	Ciraolo's Answer To Petition For Hearing Filed
January 23, 1985	California Supreme Court Denies Hearing Lucas, J. Dissents
March 26, 1985	Remittitur Issues

MUNICIPAL COURT OF
CALIFORNIA
SANTA CLARA COUNTY JUDICIAL
DISTRICT
SANTA CLARA FACILITY

FILED
DATE
SEP 21, 1982
[court stamp
illegible]

SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA
To any Sheriff, Constable, Marshal,
Policeman or Peace Officer in the County
of Santa Clara:

Proof, by affidavit, having been made
before me this day by Detective John
Shutz that there is probable cause for
believing that evidence of the commission
of a felony, to wit: a violation of
California Health and Safety Code Section
11358 (CULTIVATION OF MARIJUANA), more
particularly described below, will be
located where described below.

You are therefore, commanded, in the
daytime or [Original Blank],
(Magistrate's initials)
to make search A one story house, wood/
stucco with attached garage, light green
in color with dark green trim located on
the north side of Clark Avenue at the
northeast corner of Clark Avenue and

Stebbins Avenue, bearing the numbers
2085 in four inch metal numbers against
the wood frame that borders the garage
door on the right, which includes all
rooms, attics, basements, storage areas,
yard or ground areas, and attached
garage to said dwelling.

located at 2085 Clark Avenue, Santa
Clara, County of Santa Clara, State of
California, for the following property:

1. MARIJUANA in any form;
2. Packaging and storage materials,
including but not limited to plastic
baggies, large plastic garbage bags,
scales other than bathroom scales,
and/or other weighing devices;
3. Proof of occupancy of the above
described premises including, but
not limited to, telephone bills,
utility bills, rent receipts and
other correspondence, as well as
keys;
4. Notes, records, customer lists, and
price lists, relating to the sales
of Marijuana;

[Exhibit stamp deleted in printing.]

5. Paraphernalia used in the
preparation of Marijuana for
ingestion and sale including, but
not limited to, screens and stem and
seed preparation boxes.

6.

And if you find the same or and part thereof, to hold such property in your possession under California Penal Code Section 1536.

Given under my hand this 8th day of September, 1982.

[Manuscript signature
deleted in printing.]
JUDGE OF THE MUNICIPAL COURT

[Seal omitted in printing.]

7.

MUNICIPAL COURT OF CALIFORNIA
SANTA CLARA COUNTY JUDICIAL DISTRICT
Santa Clara FACILITY

WARRANT #	[Court stamp
RECEIVED	illegible]
BY	FILED
ON 4-8-82	DATE <u>SEP 21, 1982</u>
[Manuscript signature deleted in printing.]	[Manuscript signature deleted in printing.]

STATE OF CALIFORNIA)	
	)	SS
COUNTY OF SANTA CLARA	)	<u>AFFIDAVIT IN</u>
		<u>SUPPORT OF</u>
		<u>SEARCH WARRANT</u>

Personally appeared before me this 8th day of September 1982, Detective John Shutz who, on oath, makes complaint, and deposes and says that there is just, probable and reasonable cause to believe, and that he does believe, that there is now in the possession of unknown persons, on the premises located at 2085 Clark Avenue, Santa Clara County of Santa Clara, which premises consist of: A one story house of wood and stucco construction. The house is painted light green with dark green trim

located on the north side of Clark Avenue at the northeast corner of Clark Avenue and Stebbins Avenue, bearing the numbers 2085 in four inch metal numbers against the wood frame that borders the garage door on the right, which includes all rooms, attics, basements, storage areas, yard or ground areas, and attached garage to said dwelling

personal property described as follows:

1. MARIJUANA in any form;
2. Packaging and storage materials, including but not limited to plastic baggies large plastic garbage bags, scales other than bathroom scales, and/or other weighing devices;
3. Proof of occupancy of the above described premises including, but not limited to, telephone bills, utility bills, rent receipts and other correspondence, as well as keys;
4. Notes, records, customer lists, and price lists, relating to the sales of Marijuana;
5. Paraphernalia used in the preparation of Marijuana for ingestion and sale including, but not limited to, screens and stem and seed preparation boxes.

Your affiant has been a police officer for eight years with the Santa Clara Police Department. For a period of approximately twenty months affiant has

been assigned to the Narcotics Division of said department. Affiant has attended narcotics investigation training courses provided by the Department of Justice [Exhibit stamp deleted in printing] State of California, San Jose State University Criminal Justice Department, and the regional Police Academy. In the course of his studies your affiant received instruction concerning Marijuana, its use and its preparation for use. Topics included identification, cultivation of Marijuana, smuggling (air and sea), and law enforcement eradication.

From an experience standpoint, your affiant has assisted the Santa Clara County Narcotics Task Force in Marijuana eradication efforts. He is familiar with rural and urban Marijuana cultivation, recognizing Marijuana plants from a surveillance standpoint. Affiant has

also reviewed numerous aerial photographs of Marijuana gardens both here locally, and in the State of Hawaii on special assignment. Your affiant has also discussed Marijuana, its use and preparation for use, with his fellow narcotics officers.

Based upon his training and experience your affiant is aware of the fact that individuals cultivating Marijuana commonly pick and prepare Marijuana for use prior to the harvest of the entire plant. In this regard, your affiant is aware of the fact that cultivators of Marijuana will commonly dry the plant material prior to ingestion in areas protected from the elements such as in their residences. Your affiant is further informed of the fact that prior to its ingestion Marijuana must be separated from the usable leaves prior to its ingestion

by means of hand rolled cigarettes and/or pipes.

Based upon his training and experience your affiant knows that cultivators of Marijuana will frequently have books and records dealing with the care and cultivation of Marijuana.

Your affiant received an anonymous phone message on September 2, 1982. The message read, can see grass growing in yard, Stebbins by Clark, S/B on left. Your affiant responded to the area provided by the anonymous message and located a suspect residence at 2085 Clark Avenue, Santa Clara. Although Marijuana plants could not be observed from the street your affiant located an inner fenced area within the backyard of the above address. Your affiant is familiar with the fact cultivators of Marijuana will frequently conceal their garden with greenhouses, other plants,

12.

and elevated fences. From the street your affiant observed the inner yard with bamboo stakes attached to the top of the existing fence. The bamboo elevated the fence approximately three feet. The inner fence is approximately fifteen feet wide and is attached to the northwest corner of the above dwelling.

Based on training and experience your affiant made aerial observation of the dwelling on the same day at approximately 1420 hours. Aerial observation was from an altitude of not less than 1000 feet above ground level. Your affiant observed, without the use of visual aids or optical aids, the following items, located as hereinbefore described: A green colored residence with surrounding fenced property located on the northeast corner of Clark Avenue and Stebbins Avenue. Within the yard was another fenced yard containing a Marijuana garden.

13.

The garden measured approximately 15X25 feet. The Marijuana plants were full and approximately 8-10 feet tall. A photograph was taken by your affiant and is attached as exhibit "A".

Your affiant was accompanied by Agent R. Rodriguez of the Santa Clara County Narcotics Task Force. Agent Rodriguez has been assigned to the Task Force for one and a half years. His experience with Marijuana cultivation is as follows: July 1981-Attended the Department of Justice 80-hour Narcotics Investigation Course, a segment of which was dedicated to Marijuana cultivation and aerial observation of Marijuana. September 1981-Conducted aerial surveillance of eight Marijuana gardens, including one greenhouse, which were seized and found to be, in fact, cultivated Marijuana.

14.

July 1982-Attended the Department of Justice 80-hour Marijuana Eradication Course which included aerial observation of 13 gardens of Marijuana which were seized and found to be, in fact, Marijuana. Agent Rodriguez has also seized seven Marijuana gardens located at private homes in residential areas.

Based upon your affiant's experience, training, expertise and observations hereinbefore described, your Affiant formed the opinion that the garden located and described contains Marijuana under cultivation because of its appearance. Agent Rodriguez's opinion, based on his observation and expertise concurs with the opinion formed by your affiant regarding the cultivation of Marijuana at the garden located and described hereinbefore. Affiant knows about Rodriguez's opinion and experience because he told Affiant about it.

15.

Affiant believes that the first above mentioned evidence of the commission of a felony will be located at the premises first above described.

That based upon the above facts, your affiant prays that a Search Warrant be issued with respect to the above location for the seizure of said property and that same be held under Section 1536 of the Penal Code and disposed of according to law.

Subscribed and sworn	[Manuscript
to before me this	signature
day of	deleted in
September, 1982.	<u>printing.]</u>

[Manuscript signature deleted in
JUDGE OF THE MUNICIPAL COURT printing.]

GWK:tr

[Exhibit "A" (photograph) deleted in printing.]

[Clerk's Transcript p. 2]

IN THE MUNICIPAL COURT OF THE STATE
OF CALIFORNIA
SANTA CLARA COUNTY JUDICIAL DISTRICT
SANTA CLARA FACILITY

FILED
MAY 9-1983
JOHN KAZUBOWSKI, Clerk
[Manuscript
signature deleted
in printing.]

BEFORE THE HONORABLE
WILLIAM F. BROWN, JR., JUDGE

---o0o---

THE PEOPLE OF THE STATE	NO.: D8231923
OF CALIFORNIA,	CHARGE: Violation
Plaintiff,	of Section
	Ct. 1 - 11358 H&S

vs.

DANTE CARLO CIRAOLLO,
Defendant.

---o0o---

PRELIMINARY EXAMINATION 88043
Wednesday, April 27, 1983
2:00 o'clock p.m.

---o0o---

APPEARANCES

For the People: JULIUS L. FINKELSTEIN
Deputy District Attorney

For the Defendants: JOHN C. HORNING, JR.
Deputy Public Defender

Marolyn O. Chow, CSR
Official Court Reporter
Certificate No. 2587

---o0o---

[CT 4]

Santa Clara, California April 27, 1983

PROCEEDINGS

THE COURT: Call the case then of
People versus Dante Ciraolo.

MR. FINKELSTEIN: Yes, Your Honor.
Julius Finkelstein, Deputy District
Attorney, appearing on behalf of the
People We're ready.

MR. HORNING: I'm John Horning for
the Defense, Your Honor.

THE COURT: All right. This is the
time set for the preliminary examination
on alleged felony violation of Health
and Safety Code 11358, cultivation of
marijuana, alleged on September 9th,
1982.

And your investigating officer,
please.

MR. FINKELSTEIN: Yes. May it
please the Court, we'd like to designate
Officer Shutz of the Santa Clara Police

Department as the People's investigating officer for the purposes of this hearing.

And we'd ask that all witnesses be excluded and separated during this hearing, save and except for the investigating officer.

THE COURT: All right. Then all witnesses that are to testify in this case, if you would kindly step outside this court, and I would admonish you not to discuss the matter while the case is pending. And the deputy will call you in when you are to testify.

Your first witness then, please.

MR. FINKELSTEIN: We would call Officer Shutz.

[CT 5]

JOHN CHARLES SHUTZ,
called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

A. (BY MR. FINKELSTEIN) Would you please state your full name and spell your last name for the record?

A. JOHN CHARLES SHUTZ. S-h-u-t-z.

Q. You're a police officer for the City of Santa Clara?

A. Yes. I am.

Q. You're currently assigned to patrol?

A. Yes.

Q. You were previously assigned to the narcotics squad?

A. Yes. I was.

Q. How long did you serve on the narcotics squad?

A. Two years.

Q. And when did you go on to patrol duty?

A. Sometime in October, 1982.

MR. FINKELSTEIN: Your Honor, I have a certified copy of a search warrant and

affidavit in support of search warrant for premises located at 2085 Clark Avenue in the City of Santa Clara.

Like to have that marked as Exhibit One for identification.

THE COURT: May be so marked.

(Whereupon, the above-mentioned search warrant and affidavit, *People's One, an exhibit marked for identification.)

Q. (BY MR. FINKELSTEIN) On the 8th of September, Nineteen [CT 6] Hundred and Eighty-Two, did you conduct a search of premises located at 2085 Clark Avenue in the City and County of Santa Clara?

A. That was on September 9th that that search warrant was served.

Q. Strike that. You conducted a search on September 9th of 1982?

A. Yes, sir.

Q. And did you have a search warrant with you at the time?

A. Yes. I did.

Q. Is Exhibit One a certified copy of the warrant which you had with you at the time you searched the premises?

A. It is.

Q. And did you examine the back yard?

A. Briefly, yes.

Q. Was -- Did you discover any marijuana growing in the back yard?

A. Yes.

Q. I take it you had training on recognizing marijuana in the past?

A. Yes.

Q. And in the investigation of marijuana cultivation cases?

A. Yes.

Q. In your opinion, was the marijuana nurtured by human hand?

A. Yes.

Q. Did you find any evidence to establish who was occupying those premises at the time of the search?

A. Yes. We found several items. [CT 7]

Q. What did you find?

A. A citation from an incident that took place in the City of Santa Clara --

Q. You mean a misdemeanor citation?

A. Yes. I believe it was for a Business and Professions Code, an alcohol violation.

Q. Do you have that with you in court today?

A. It's in court file.

Q. May I see it, please.

MR. FINKELSTEIN: Your Honor, the witness has just handed me a copy of a Notice To Appear made out in the name of Dante Carlo Ciruolo, C-i-r-a-o-l-i. May we have it marked as Exhibit Two for identification?

THE COURT: May be so marked.

(Whereupon, the above-mentioned Notice to Appear, *People's Two, an exhibit marked for identification.)

Q. (BY MR. FINKELSTEIN) Is Exhibit Two the citation that was found on the premises that day?

A. Yes.

Q. And did you ever encounter a Mr. Ciruolo at the premises that day?

A. Yes. I did.

Q. Where did you see him?

A. I first saw him when I approached the front door of the residence, and he was walking down the hallway directly towards me.

Q. He was inside the residence?

A. Yes. [CT 8]

Q. Did you -- Are you the officer that knocked on the front door?

A. Yes.

Q. Did you give any warning or notice at the time you knocked on the front door?

A. Yes.

Q. Were you in full police uniform at the time?

A. Well, at the time, I was a narcotics officer, and typically, we would wear dark blue windbreakers with the Santa Clara Police logo on the back and a star on the front. And, occasionally, we would attach our badges to the front of the raid jacket.

Q. What did you say, if anything, when you knocked on the front door in this case?

A. I advised that we were police officers and that I had a search warrant for the residence; please open the door.

Q. Somebody open the door from inside?

A. Yes.

Q. Who was that?

A. That was Mr. Ciruolo's brother, Steve.

Q. And then did you -- when the door was opened, did you see Mr. Ciruolo?

A. Yes.

Q. And where was he?

A. He was coming down the hallway.

Q. And did you see that Mr. Ciruolo present in this courtroom this afternoon?

A. Yes, sir. [CT 9]

Q. Would you point him out, please?

A. He's seated next to Defense Counsel.

MR. FINKELSTEIN: Your Honor, may the record reflect the in-court identification of the defendant.

THE COURT: Let the record so show that.

Q. (BY MR. FINKELSTEIN) What time was it when you executed this search warrant?

A. Referring to my report, it was around 1150 hours in the morning.

Q. Shortly before noon.

A. Yes.

MR. FINKELSTEIN: I have no further questions.

CROSS EXAMINATION

Q. (BY MR. HORNING) Officer, when you first went to the residence at 2085, where did you go?

A. First time?

Q. Well, on the -- on the 9th, on September 9th, did you go up to the front door or to the back yard or --

A. I went to the front door.

Q. And where were the other officers at that time?

A. They spread out going to the side yards.

Q. They go through any gates, to your knowledge?

A. Not to my knowledge.

Q. Okay. I take it, then, you were all in front of the house?

A. No.

Q. How many officers were with you?

A. I recall myself, Detective Kerby, Sergeant Keech, Detective Hayes, and I believe Detective McCarthy. And two [CT 10] others from the narcotics task force for the county.

Q. And did you go to the front door preparatory to going around in back and looking in the back yard?

A. Yes.

Q. And you knocked, you said?

A. Yes. I believe I did.

Q. What happened then?

A. I advised through a loud voice my presence as a police officer; that I had a search warrant. And almost immediately thereafter, I got a response at the front door from -- Dante's brother, Steven.

Q. Was the front door open or closed at this time?

A. I'm trying to recall that. To the best of my recollection, I believe the

front door was open; the screen door was closed.

Q. When Steven came to the door, what did he do or say?

A. I remember that specifically. He said, "I knew it."

Q. And what was your response to that?

A. Things were fairly mellow at that point. We had no problems whatsoever with the people inside. We -- He asked us to come in. We walked in. I showed him the search warrant. Then we went about our business.

Q. Okay. Where did your business take you?

A. Well, first of all, I went to the front dining room and began to assign different tasks for the other officers that were there. In other words, I had Detective McCarthy complete interviews of anybody that was inside; Sergeant Keech fill out the paperwork of any evidence

seized. And the rest of the [CT 11] officers were assigned to searching the residence.

MR. HORNING: Your Honor, I would like to ask some questions of the officer which would relate to traversing the warrant. I haven't made a motion to do that yet, and I might not. Depend upon what his testimony is.

MR. FINKELSTEIN: I have no objection.

THE COURT: All right. You may proceed, Counsel.

Q. (BY MR. HORNING) You're the officer that obtained the warrant in this case. Is that not true?

A. Yes.

Q. And you had some information about activity at this address I take it. Is that right?

A. Yes.

A. And as a result of that, you conducted an investigation in an airplane. Is that right?

A. Yes.

Q. And can you tell us how you went about that?

A. I received an anonymous complaint from a citizen who wished not to give a name, stating there were marijuana plants growing in the back yard of a particular house. I believe it said on Clark near Stebbins, on the south side of the street. I don't remember the exact words.

As a result of that and many other complaints I got for other homes within the City of Santa Clara, I accumulated all these complaints into a file. And as a result of getting all these complaints in a file, I chartered an airplane, and with a qualified pilot, we went out with several people in the aircraft and made

observations and took photographs of these particular [CT 12] residences.

Q. Was the plane chartered at the San Jose airport?

A. Yes.

Q. Do you recall the name of the pilot?

A. I only recall his first name is Tim.

Q. And what firm did you charter the aircraft from?

A. I don't recall that. I could find out.

Q. And is there a certain altitude at which you flew over the areas that you were inspecting?

A. Thousand feet minimum.

Q. Okay. Now, was there some reason why you selected a thousand feet?

A. Well, I was told that by an individual that had just went through two weeks of the DOJ Marijuana Eradication School. Their recommendation was one thousand feet.

Q. This was for over-flights?

A. Yes.

Q. Did you relay that information to the pilot?

A. Oh, yes.

Q. Did you use any binoculars to assist you with your inspecting of the areas you were out to look at?

A. No.

Q. Did any of the others officers?

A. No. We didn't take any visual aids whatsoever up into the aircraft.

Q. And did you look to see whether or not the officer observed the thousand foot limit you'd set up on him. I'm sorry, the pilot; whether the pilot observed that.

[CT 13]

A. I reminded him, I recall several times, to make sure he stays at least above a thousand feet.

Q. Were you looking at the altimeter in the aircraft from time to time.

A. Several times I did, yes.

Q. And when you looked at it, were you able to tell whether or not he was above or below a thousand feet?

A. Oh. I knew by looking at the altimeter that he wasn't below a thousand feet.

A. Were you able to read the altimeter?

A. Yes.

Q. Do you have any pilot training yourself?

A. No.

Q. Were there photographs taken from the airplane?

A. Yes.

Q. Do you have a photograph of the premises in question here with you?

A. I believe those photographs are filed in the original court search warrant.

Q. Looks like there is one with the affidavit that --

A. That's a xerox copy.

Q. Okay. Now, what's a Xerox copy?

A. It's a Xerox copy of the photograph in Exhibit A of the affidavit.

Q. You say the original's lodged with the Court?

A. Yes.

Q. Now, my question is: Was there more than one such photograph taken of 2085 Clark Avenue. [CT 14]

A. There may have been. If I can take a look inside this file.

Q. Would you, please.

A. (Witness complies.)

Yes. I have one in front of me.

Q. May I see it, please.

A. (Witness complies).

MR. HORNING: Like that marked as Defense exhibit first in order Your Honor. It's a photograph of houses.

THE COURT: May be marked Defense A then.

(Whereupon, the above-mentioned photograph, *Defendant's A, an exhibit marked for identification.)

Q. (BY MR. HORNING) Officer Shutz, let me show you this photograph you've just handed me marked Defense Exhibit A and ask you what it shows.

A. Shows residential tract that I recognize as particular streets in the City of Santa Clara, and specifically in the center of the photograph, is the house where Dante Ciruolo lives and indicates front yard, side yard, and back yard.

Q. And could you see the marijuana from where you were when you took that photograph?

A. Yes.

Q. Would you point that out to me, please.

A. It's right here in the center of the photo.

Q. And what is there about that growth to enable to you to identify it as being marijuana.

A. The color.

Q. Anything else? [CT 15]

A. No. That's what attracted me the most, was the color.

Q. Well, if -- the color's green like the other plants you see in the picture. Isn't it?

A. Not that same shade of green. The photograph does not really show the highlights of the green that comes off a marijuana leaf. This is not a true representation of that color. There is a difference when you look at this photograph, between itself and the other plants around it, but you have to see it with the naked eye. This particular camera did not have any filtering equipment on it, either.

Q. Did you take the picture, incidentally?

A. Yes.

Q. What kind of a camera was used?

A. It's a thirty-five millimeter single reflex.

Q. Was there anything about the area where you saw this -- these plants or the way they were located or anything else that caused you to believe they were marijuana?

A. One other thing.

Q. What's that?

A. The fence line bordering the marijuana plants had elevated bamboo stakes, increasing a height of the standard six foot fence to probably -- ten feet.

Q. Could you see that from where you were?

A. Yes.

Q. In the airplane?

A. I saw it earlier when I went by the house on foot.

Q. Did you at times after or before you looked at this particular place on Clark from the airplane fly lower over that [CT 16] same neighborhood?

A. Not that I recall.

Q. You just remember going over and taking the picture and looking and --

A. Yes. We were extremely busy with plotting our direction. We had a number of different places to go. We had to watch for other aircraft. We were in a flight line with the San Jose airport. And all I recall is plotting these various locations on my map; attempting to get the one point after another, without tying up air traffic too long.

Q. Were you surprised at what you found in that flight?

A. Pardon?

Q. Were you surprised by what you found as a result of that flight?

A. No. Not at all.

Q. How many --

A. We expected that.

Q. How many different locations did you find marijuana growing in the city?

A. In the city? I would say five.

Q. During that flight?

A. Yes.

Q. Did you have some false reports you discovered, as well?

A. Yes.

Q. How many places did you look at in all?

A. In all? Maybe ten to twelve.

Q. And so, then, five had marijuana and five to seven did not. Would that be correct? [CT 17]

A. Right.

MR. HORNING: I have no further questions, Your Honor.

MR. FINKELSTEIN: Just briefly.

REDIRECT EXAMINATION

Q. (BY MR. FINKELSTEIN) Approximately how many plants were there in this case?

A. Seventy-three.

Q. And what was the approximate and average height of the plants?

A. Eight feet.

MR. FINKELSTEIN: Thank you. I have no further questions.

THE COURT: Anything else.

MR. HORNING: No.

THE COURT: Thank you, Officer. May step down.

THE WITNESS: Thank you, Your Honor.

MR. FINKELSTEIN: We would offer Exhibits One and Two in evidence. And we have no additional witnesses to call at this hearing.

THE COURT: All right. Any objection to the entry of those?

MR. HORNING: Not on the state of the evidence, Your Honor.

THE COURT: All right. That will be entered at this point.

(Whereupon, admitted to evidence, *People's One and Two, exhibits previously marked for identification.) [CT 18]

THE COURT: Counsel, do you wish to submit Defense A, as well.

MR. HORNING: No, Your Honor.

THE COURT: All right. Any witnesses that you would want to call?

MR. HORNING: Not at this hearing.

THE COURT: All right. And is the matter submitted then.

MR. HORNING: Yes.

THE COURT: All right. It appearing to the Court that a crime has been committed and that there's a strong suspicion that the defendant committed the

same, I'll hold him to answer in the Superior Court of this County.

And the arraignment in that matter, then, would be on May the 9th. And will be at 1:30 p.m. in the afternoon in the Superior Court.

MR. FINKELSTEIN: Your Honor, may all exhibits, including Defense A, be released to Officer Shutz?

THE COURT: All right. That would be so ordered.

MR. FINKELSTEIN: Thank you.

THE COURT: You're welcome.

(Whereupon, at the hour of 4:40 p.m., these proceedings were concluded this day.)

[Court Reporter's Certificate deleted in printing.]

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE	)	The 8th day
OF CALIFORNIA,	)	of August,
	)	A.D., 1983
Plaintiff,)	
	)	*AMENDED
Against	)	FILED
	)	AUG 8, 1983
DANTE CARLO CIRAOLLO,	)	JOHN KAZUBOWSKI
	)	Clerk
Defendant.	)	[coding
	)	deleted in
	)	printing.]
	)	INFORMATION
		NO.88043

COUNT ONE

The District Attorney of the County of Santa Clara, State of California, hereby accuses DANTE CARLO CIRAOLLO of a felony, to-wit: a viol. of Calif. Health and Safety Code Section 11358 (CULTIVATION-MARIJUANA) in that, on or about the 9th day of September, A.D., 1982, in the County of Santa Clara, State of California, the said defendant(s) did plant, cultivate,

harvest, dry and process a controlled substance, to wit: MARIJUANA.

COUNT TWO

* * * * *

Leo Himmelsbach

District Attorney

[coding deleted in printing.] By [Manuscript signature deleted in printing.]
JOYCE F. NEDDE/D89

Deputy District Attorney

[Reporter's Transcript, p. 2]

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
DEPARTMENT NO. 2

BEFORE HONORABLE
WILLIAM J. HARRIS, JR., JUDGE
---o0o---

THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	
Plaintiff,	)	NO. 88043
)	
vs.)	
)	
DANTE CARLO CIRAULO,)	
)	
Defendant.)	

---o0o---

SAN JOSE, CALIFORNIA
AUGUST 15, 1983

---o0o---

APPEARANCES:

FOR THE PEOPLE: NEAL J. KIMBALL,
DEPUTY DISTRICT
ATTORNEY

FOR THE DEFENDANT: ROBERT WEEKS &
ROBERT REGAN,
DEPUTY PUBLIC
DEFENDERS
CRAIG KRONER,
CERTIFIED LAW
STUDENT

---o0o---

[RT 3]

P R O C E E D I N G S

THE COURT: THIS IS ACTION NUMBER 88043, THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS DANTE C. CIRAOLLO.

MR. KIMBALL: NEAL J. KIMBALL, DEPUTY DISTRICT ATTORNEY, FOR THE PEOPLE, YOUR HONOR.

MR. REGAN: MR. CIRAOLLO IS PRESENT, REPRESENTED BY THE PUBLIC DEFENDER'S OFFICE, YOUR HONOR, ROBERT REGAN APPEARING WITH LAW STUDENT CRAIG KRONER AND MR. WEEKS.

THE COURT: SPELL YOUR LAST NAME FOR THE RECORD, MR. KRONER.

MR. KRONER: K-R-O-N-E-R.

MR. REGAN: THIS MOTION WILL BE ARGUED BY MR. KRONER, AND THE CONSENT OF THE DEFENDANT TO HAVE HIM REPRESENT HIM IN THIS MOTION HAS BEEN SIGNED BY MR. CIRAOLLO.

THE COURT: IT MAY BE FILED HEREIN.

MR. REGAN: THERE IS ONE MATTER. LAST WEEK THE MATTER WAS CONTINUED BY STIPULATION DUE TO MY VACATION AND MR. CIRAOLLO APPARENTLY MISUNDERSTOOD WHERE TO GO. HE WAS IN THE BUILDING, I UNDERSTAND, BUT DID NOT APPEAR AND WAS TOLD THAT A BENCH WARRANT HAD BEEN ISSUED. IF THAT IS THE CASE, I WOULD ASK THE COURT TO RECALL IT AT THIS TIME.

THE COURT: MR. CLERK? IT DOESN'T APPEAR THAT THAT IS THE CASE, BUT I JUST WANT TO CHECK.

THE CLERK: THAT IS CORRECT, YOUR HONOR.

MR. REGAN: OKAY. FINE.

THE COURT: LET THE RECORD SHOW THE COURT HAS [RT 4] RECEIVED, READ AND CONSIDERED THE POINTS & AUTHORITIES BOTH BY THE MOVING PARTY AND THE RESPONDING PARTY IN THIS MATTER. THE MOVING PARTY CARE TO BE HEARD FURTHER?

MR. KRONER: YES, YOUR HONOR. WE HAVE SOME TESTIMONY TO PRESENT IN THIS CASE.

THE COURT: CALL YOUR FIRST WITNESS.

MR. KRONER: WE WOULD LIKE TO CALL MARY CIRAULO.

THE COURT: IS THERE A STIPULATION THAT THERE WAS NO SEARCH WARRANT IN THIS CASE?

MR. KIMBALL: YOUR HONOR, THIS IS A SEARCH WARRANT CASE. I WILL OFFER TO STIPULATE WITH THE DEFENSE COUNSEL THAT THE EXHIBIT ATTACHED TO THE BACK OF HIS MOVING PAPERS, WHICH INCLUDE A SEARCH WARRANT FOR 2085 CLARK AVENUE IN THE CITY OF SANTA CLARA AND THE AFFIDAVIT IN SUPPORT THEREOF MAY BE ADMITTED INTO EVIDENCE AT THIS TIME.

THE COURT: AND THAT IS INCLUDING THE EXHIBIT THAT IS THE PICTURE, RIGHT?

MR. KIMBALL: YES, YOUR HONOR.

MR. KRONER: WE WILL STIPULATE TO THAT, YOUR HONOR.

THE COURT: THE SEARCH WARRANT, WHO IS IT SIGNED BY?

MR. KIMBALL: JOSEPH BIAFORE, I BELIEVE. YES.

THE COURT: FILED ON SEPTEMBER 21, '82. AND THE AFFIDAVIT IN SUPPORT OF SEARCH WARRANT FILED SEPTEMBER 8, '82 THE AFFIDAVIT BEING SIGNED BY DETECTIVE JOHN SHULTZ. BENCH WARRANT BEING SIGNED BY JOSEPH BIAFORE, I BELIEVE, YES, JUDGE [RT 5] OF THE MUNICIPAL COURT, WILL BE ADMITTED INTO EVIDENCE BY STIPULATION.

(WHEREUPON, THE ABOVE-MENTIONED DOCUMENT, BEING A BENCH WARRANT, WAS RECEIVED IN EVIDENCE AND MARKED PEOPLE'S EXHIBIT NO. 1.)

MR. KRONER: YOUR HONOR, WE WOULD ALSO LIKE TO STIPULATE TO THE PRELIMINARY EXAMINATION TRANSCRIPT.

THE COURT: VERY WELL. ANY OBJECTION?

MR. KIMBALL: NO, YOUR HONOR. I DON'T QUITE UNDERSTAND THAT. AS FAR AS THE MOVING PAPERS INDICATE, THEY ARE CLAIMING THAT AN AERIAL OVERFLIGHT OF 1,000 FEET WAS SOME TYPE OF INFRINGEMENT. THEN THE OFFICER GOT A SEARCH WARRANT AND THE SEARCH APPEARS TO ME TO BE BASED ON THE SEARCH WARRANT. YOU DON'T NEED THE PRELIMINARY EXAMINATION TRANSCRIPT.

THE COURT: WELL, IT MIGHT SHOW HOW THE SEARCH WARRANT WAS ISSUED.

MR. KRONER: EXACTLY.

THE COURT: THE TRANSCRIPT OF THE PRELIMINARY EXAMINATION WILL BE RECEIVED IN EVIDENCE. AFFIDAVIT AND THE SEARCH WARRANT WILL BE ONE AND THE PRELIMINARY EXAMINATION WILL BE TWO.

(WHEREUPON, THE PRELIMINARY EXAMINATION TRANSCRIPT WAS RECEIVED IN EVIDENCE AND MARKED PEOPLE'S EXHIBIT NO. 2.)

THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

MR. KRONER: I WOULD LIKE TO CALL MARY CIRAOLO TO [RT 6] THE STAND.

MR. KIMBALL: FOR THE RECORD, PEOPLE OBJECT TO THIS TESTIMONY ON THE GROUND THAT THIS EVIDENCE WAS NOT BEFORE JUDGE BIAFORE WHEN HE ISSUED THE SEARCH WARRANT. IT SEEMS TO ME THAT THE SEARCH WARRANT OF THE RESIDENCE AND THE BACK YARD FLIES ON THE SEARCH WARRANT AFFIDAVIT.

THE COURT: I WOULD AGREE. DO YOU WANT TO BE HEARD?

MR. KRONER: YES, YOUR HONOR. HER TESTIMONY IS IMPORTANT TO THIS MOTION BECAUSE SHE CAN ESTABLISH CERTAIN FACTORS THAT SHOW THAT THE OBSERVATION OF THE DEFENDANT'S BACK YARD VIOLATED HIS RIGHT TO PRIVACY AND HIS RIGHT TO THE FOURTH AMENDMENT.

THE COURT: WE HAVE A SEARCH WARRANT HERE, COUNSEL.

MR. KRONER: THAT IS CORRECT.

THE COURT: ARE YOU TRAVERSING THE SEARCH WARRANT?

MR. KRONER: WE ARE ARGUING THAT THE OFFICER -- THE AERIAL OVERFLIGHT EVIDENCE OBTAINED FROM THAT WAS USED TO PROCURE THE SEARCH WARRANT.

THE COURT: I UNDERSTAND THAT.

MR. KRONER: OKAY.

THE COURT: I DON'T SEE WHAT THE WITNESS'S TESTIMONY IS GOING TO ADD TO THIS. I AM GOING TO LOOK AT THE SEARCH WARRANT TO SEE IF THE SEARCH WARRANT IS GOOD.

MR. WEEKS: MAY I HAVE A MOMENT, YOUR HONOR?

(WHEREUPON, COUNSEL FOR THE DEFENDANT CONFERRED [RT 7] OFF THE RECORD.)

MR. KRONER: YOUR HONOR, THERE WAS A PHOTOGRAPH ATTACHED TO THE SEARCH WARRANT

OF THE DEFENDANT'S BACK YARD AND MISS CIRAOLO'S TESTIMONY WILL HELP CLARIFY OUR POSITION THAT THE AERIAL SURVEILLANCE OF THE BACK YARD VIOLATED HIS RIGHT TO PRIVACY.

THE COURT: I WILL SUSTAIN THE PEOPLE'S OBJECTION TO THE INTRODUCTION OF THAT PROFFERED EVIDENCE.

MR. KRONER: OKAY, YOUR HONOR. THEN I WOULD JUST LIKE TO RESPOND TO THE PEOPLE'S POINT & AUTHORITIES.

THE COURT: OKAY.

MR. KRONER: BY SAYING THAT THEY BASE THEIR POINTS & AUTHORITIES ON SAYING THAT THE DEFENDANT'S RIGHT TO PRIVACY HERE WAS PURELY SUBJECTIVE AND THEY MENTION THAT THE DETERMINATION IS MADE ON THE TOTALITY OF THE CIRCUMSTANCES OF WHETHER THEY OBJECTIVELY EXHIBITED THE EXPECTATION OF PRIVACY.

THE COURT: COUNSEL, I CONSIDER THIS MATTER A QUESTION OF LAW BASED UPON THE

INFORMATION CONTAINED IN THE SEARCH WARRANT. I THINK AT THIS STAGE OF THE PROCEEDING I MUST CONSIDER THE INFORMATION CONTAINED IN THE SEARCH WARRANT TO BE TRUE.

MR. KRONER: I AM NOT ARGUING THAT THE INFORMATION CONTAINED IN THE SEARCH WARRANT ISN'T TRUE, YOUR HONOR. MY ARGUMENT IS THAT THE AERIAL SURVEILLANCE THAT LED TO THE PROCUREMENT OF THE SEARCH WARRANT VIOLATED THE DEFENDANT'S [RT 8] FOURTH AMENDMENT RIGHT AND HIS RIGHT TO PRIVACY.

THE COURT: ALL RIGHT. GO AHEAD.

MR. KRONER: AND IN MY POINTS & AUTHORITIES I POINT OUT THAT HIS BACK YARD HAD A HIGH FENCE AROUND IT. THE PURPOSE OF THE FENCE WAS FOR -- TO PROTECT THE PRIVACY OF THE FAMILY LIVING AT THE HOUSE OF THEIR PRIVACY. THERE WAS A POOL IN THE BACK YARD. THERE WAS SUN BATHING GOING ON. IT CLEARLY DEMONSTRATED A RIGHT TO

PRIVACY IN THE BACK YARD. AND THESE SPECIFIC ACTIVITIES ARE MENTIONED IN DEAN VERSUS SUPERIOR COURT OF AREAS THAT CUSTOMARILY -- ARE CUSTOMARILY PRIVATE AND THEY DO EXHIBIT A REASONABLE EXPECTATION OF PRIVACY.

NOW, I AM ALSO ARGUING THAT PEOPLE VERSUS ARNOLD SHOULD CONTROL THE OUTCOME OF THIS CASE BECAUSE HERE THE POLICE VIEWED AN AREA THAT WAS COVERED BY A REASONABLE EXPECTATION OF PRIVACY BY SOME TYPE OF OPTICAL AID, AND THEY COULD NOT HAVE VIEWED IT WITHOUT THE AID OF EITHER A BINOCULAR OR IN THIS CASE AN AIRPLANE. BECAUSE THE POLICE HAD TO WHAT I MIGHT SAY CIRCUMVENT THE FENCE TO GET A VIEW OF WHAT WAS INSIDE THE DEFENDANT'S BACK YARD, THEY VIOLATED HIS RIGHT TO PRIVACY.

THE COURT: THANK YOU.

MR. KRONER: I WOULD ALSO LIKE TO ADD THAT THE POLICE KNEW THAT THE FENCE

WAS THERE AND THAT IS WHY THEY HAD TO GO OUT AND RENT AN AIRPLANE TO LOOK DOWN UPON THE YARD, BECAUSE THEY JUST OTHERWISE COULD NOT VIEW THE BACK [RT 9] YARD.

THE COURT: I AM JUST WONDERING, COUNSEL, HOW YOU GET TO WHERE YOU ARE. AN AFFIDAVIT WAS DRAWN UP BY AN OFFICER, WAS PRESENTED TO A MAGISTRATE. THE MAGISTRATE, BASED UPON THAT AFFIDAVIT, ISSUED A SEARCH WARRANT.

MR. KRONER: YES, YOUR HONOR. AND I REALIZE THAT THAT IS PRESUMPTION THAT THE SEARCH WARRANT OR THE SEARCH WAS LEGAL. NOW, I KNOW, TOO, YOU ARE AWARE THAT WE ARE NOT ATTACKING THE SEARCH WARRANT ITSELF. WE ARE ATTACKING THE MEANS USED TO PROCURE THE SEARCH WARRANT, WHICH WAS AN UNCONSTITUTIONAL SURVEILLANCE OF THE PLAINTIFF'S BACK YARD -- OR THE DEFENDANT'S BACK YARD.

THE COURT: HOW DO YOU GET THERE?

MR. KRONER: WELL, MR. CIRAOLO'S BACK YARD --

COURT: NO, NOT FACTS, PROCEDURALLY.

MR. KRONER: EXCUSE ME, YOUR HONOR?

THE COURT: DO WE ASSUME THE FACTS CONTAINED IN THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT ARE TRUE?

MR. KRONER: YES, WE DO.

THE COURT: THEN YOU ARE SAYING AS A MATTER OF LAW THOSE FACTS CONTAINED IN THE SEARCH WARRANT VIOLATED THE DEFENDANT'S FOURTH AMENDMENT RIGHT OR HIS RIGHT OF PRIVACY?

MR. KRONER: CORRECT. WELL, THE RIGHT OF PRIVACY IS COEXISTANT WITH THE FOURTH AMENDMENT RIGHT, SO THAT WHEN THE POLICE SURVEILLED MR. CIRAOLO'S BACK YARD THAT A [RT 10] REASONABLE EXPECTATION BY VIRTUE OF THE FENCE THAT SURROUNDED THE SWIMMING POOL AND THE SUN BATHING AREA, THEY VIOLATED HIS RIGHT TO PRIVACY BY THAT ACT.

THE COURT: CAN YOU GIVE ME AN EXAMPLE OTHER THAN AN AERIAL SURVEILLANCE, SOMETHING THAT WOULD BE ANALAGOUS TO THIS SUBJECT?

MR. KRONER: WELL, YOUR HONOR, THERE WAS A FENCE SURROUNDING THIS BACK YARD AND THE POLICE, THEY COULDN'T VERY WELL --

THE COURT: NO. NO. YOU MISUNDERSTAND ME. I AM NOT TALKING ABOUT THE FACTS OF THIS CASE. I UNDERSTAND THE FACTS OF THIS CASE VERY WELL. I AM CONFINING MYSELF TO THOSE CONTAINED IN THE AFFIDAVIT FOR SEARCH WARRANT, RIGHT?

MR. KRONER: YES.

THE COURT: YOU ARE TRYING TO OVERCOME THE PRESUMPTION OF THE LEGALITY OF THE SEARCH, RIGHT?

MR. KRONER: THAT IS RIGHT, YOUR HONOR.

THE COURT: HOW ARE YOU DOING THAT? YOU ARE SAYING AS A MATTER OF LAW, GIVEN ALL THESE FACTS, THAT IS IN AND OF ITSELF

VIOLATIVE OF THE DEFENDANT'S FOURTH AMENDMENT, RIGHT?

MR. KRONER: NO. WHAT I AM SAYING IS AS A MATTER OF LAW THE DEFENDANT'S BACK YARD HAS A REASONABLE EXPECTATION OF PRIVACY BY VIRTUE OF THE ITEMS I HAVE ALREADY MENTIONED. NOW, THE POLICE BY -- AND I CITE PEOPLE VERSUS ARNOLD FOR THIS CONTENTION -- THAT THE POLICE USED SOME [RT 11] TYPE OF OPTICAL AID TO CIRCUMVENT THAT FENCE.

THE COURT: I THOUGHT HE LOOKED OUT WITH HIS OWN TWO EYES AND SAID, "I DIDN'T USE BINOCULARS." THEY WERE IN A BUILDING, TOO, WEREN'T THEY?

MR. KRONER: YES, SIR. BUT THE POINT IS, WHETHER HE USED BINOCULARS OR WHETHER HE USED AN AIRPLANE, HE COULD NOT SEE WHAT HE DID WITHOUT THE USE OF SOME TYPE OF AID.

THE COURT: HE COULD SEE FROM WHERE HE WAS, COULDN'T HE?

MR. KRONER: HE HAD TO USE THE AIRPLANE TO LOOK DOWN AND SEE WHAT WAS IN THE BACK YARD. BY THAT WAY HE CIRCUMVENTED THE FENCE THAT THE CIRAOLO FAMILY HAD PUT UP TO INCREASE THEIR PRIVACY.

THE COURT: MAY I HEAR FROM THE PEOPLE?

MR. KIMBALL: YES, YOUR HONOR. THERE ARE SOME CASES THAT HOLD AERIAL OVERFLIGHT UNLAWFUL WHEN THEY ARE VERY LOW TO THE GROUND, LIKE THERE WAS A CASE THAT INVOLVED TWENTY, TWENTY-FIVE FEET. IN THIS PARTICULAR CASE, WHERE YOU ARE 1,000 FEET OVER THE RESIDENCE AND THE OFFICER USES NO VISUAL AID TO SEE DOWN INTO THE BACK YARD, PEOPLE WOULD SUBMIT BASICALLY THAT THAT IS A LAWFUL SURVEILLANCE. AND BASED UPON THAT THE MAGISTRATE WAS ABLE TO ISSUE A SEARCH WARRANT BASED ON REASONABLE AND PROBABLE CAUSE TO BELIEVE THAT THERE WAS IN FACT MARIJUANA PLANTS BEING CULTIVATED IN THE BACK YARD.

PEOPLE WOULD SUBMIT IT.

[RT 12] MR. KRONER: ONCE AGAIN, YOUR HONOR, I THINK IT IS CLEAR TO DISTINGUISH THIS CASE FROM THE ONE THAT THE PEOPLE MENTIONS. AND THOSE WHOLE LINE OF CASES DEAL WITH RURAL PATCHES OF MARIJUANA IN OPEN FIELDS. WHAT WE HAVE HERE IS YOUR BACK YARD, FAMILY SWIMMING POOL, SUN BATHING AREA IN THEIR BACK YARD.

THE COURT: YOU ARE NOT SAYING THAT ANY PRIVATE PILOT FLYING 1,000 FEET COULDN'T SEE THIS?

MR. KRONER: AS A MATTER OF FACT, I DON'T BELIEVE ANY PILOT COULD BECAUSE WHY WOULD HE BE LOOKING FOR IT?

THE COURT: THAT SORT OF BEGS THE QUESTION, DOESN'T IT?

MR. KRONER: THIS WAS A POLICE OFFICER WHO TRIED TO FIND SOME WAY TO INVADE THE PRIVACY OF MR. CIRAOLO SO HE COULD LOOK DOWN.

THE COURT: THEN YOU ARE TALKING ABOUT A PRETEXT, IS THAT RIGHT?

MR. KRONER: NO, I AM TALKING ABOUT THE CIRCUMVENTING OF THE FENCE.

THE COURT: SUPPOSE JUST A SUNDAY AIRPLANE PILOT FLEW OVER, HE COULD SEE THE SAME THING AS THE OFFICER. THERE IS NO PRIVACY INVOLVED THERE. PEOPLE LIVE AROUND AIRPORTS, THEY HAVE TO EXPECT OVERFLIGHTS, DON'T THEY?

MR. KRONER: THAT IS TRUE, BUT THIS ISN'T A PRIVATE CITIZEN. THIS IS A POLICE OFFICER LOOKING FOR PATCHES OF MARIJUANA.

[RT 13] THE COURT: ISN'T THAT EXACTLY THE DISTINCTION THAT A LOT OF THE CASES MENTION, WHAT ORDINARY PERSON COULD SEE FROM WHERE THEY LAWFULLY WERE?

MR. KRONER: WELL, THAT IS MY POINT, TOO, YOUR HONOR. THIS POLICEMAN COULD NOT HAVE SEEN -- THIS POLICEMAN INVADED MR. CIRAOLO'S RIGHT TO PRIVACY, SO HE COULDN'T HAVE HAD A RIGHT TO BE WHERE HE WAS. I

MEAN, I THINK IT IS CLEAR FROM DEAN VERSUS SUPERIOR COURT THAT A BACK YARD IN AN URBAN AREA THAT HAS THESE TYPES OF ITEMS THAT MR. CIRAOLO HAS IN HIS BACK YARD DOES EXHIBIT REASONABLE EXPECTATION OF PRIVACY. PEOPLE VERSUS ARNOLD HOLDS THAT WHEN THE POLICE USE SOME TYPE OF OPTICAL AID TO VIEW INTO THAT PROTECTED AREA, THEY VIOLATE THEIR RIGHT TO PRIVACY.

THE COURT: THANK YOU, COUNSEL.

ANYTHING FURTHER ON BEHALF OF THE PEOPLE?

Mr. KIMBALL: NO, YOUR HONOR. THANK YOU.

THE COURT: THE MATTER WILL STAND SUBMITTED. WHEN IS THE PRETRIAL?

MR. REGAN: IT WAS TODAY, YOUR HONOR.

THE COURT: IT WAS TODAY? YOU ARE WAITING ON --

MR. REGAN: WELL, THE CASE IS COMPLICATED BY THE FACT THAT MR. CIRAOLO HAS A NEW CASE THAT JUST ARRIVED FROM MUNI COURT, AND I THOUGHT IT WAS ON THIS COURT'S CALENDAR AS WELL FOR TRIAL SETTING BUT I DON'T SEE IT ON THE CALENDAR. SO I AM NOT CERTAIN WHAT IS GOING TO HAPPEN TO THE TRIAL DATE. IT WILL PROBABLY BE CONTINUED, BUT IT WILL HAVE TO [RT 14] BE OFF THE TRIAL CALENDAR, I SUPPOSE.

THE COURT: ALL I AM DOING IS ORDERING THIS MATTER SUBMITTED. YOU CAN TAKE IT FROM THERE.

THANK YOU

(WHEREUPON, PROCEEDINGS ADJOURNED.)

[Judge's, Clerk's and Court Reporter's Certificates omitted in printing.]

SUPERIOR COURT OF THE
STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

FILED
AUG 30, 1983
JOHN KAZUBOWSKI, Clerk
By _____ Deputy

PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
Plaintiff,	)	NO. 88043
)	
vs)	
)	
DANTE C. CIRAOLO,	)	<u>ORDER OF COURT</u>
Defendant.)	
_____)	

The defendant's Motion to Suppress Evidence pursuant to Penal Code 1538.5 will be and the same is hereby ordered denied.

Dated: August 30, 1983

[Manuscript signature
deleted in printing.]

William J. Harris, Jr.
Judge of the Superior Court

cc: Neal Kimball, DDA
R.K. Regan, PD

DANTE CARLO CIRAOLO
2085 Clark Avenue
Santa Clara, CA 95051

FILED
JAN 6, 1984
County Clerk
Santa Clara County

In Propria Persona by _____
Deputy

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	
Plaintiff,	)	No. 88043
)	
-vs-	)	NOTICE OF
	)	APPEAL
DANTE CARLO CIRAOLO,	)	PURSUANT TO
	)	PENAL CODE
Defendant.	)	SECTION 1538.5
)	
_____)	

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN that the defendant hereby appeals from the judgment entered in the above-entitled case based upon the grounds that the Court improperly denied his motion to suppress certain evidence made pursuant to Penal Code section 1538.5 and/or 1539.

I certify under penalty of perjury that I am indigent and unable to afford counsel and request the Court to appoint counsel to handle my appeal and that all transcripts and clerk's transcripts be prepared at no cost to myself.

Executed at San Jose, California,
this 6th day of January, 1984.

[Manuscript signature
deleted in printing.]

DANTE CARLO CIRAOLO
In Propria Persona

NOTE REGARDING THE JUDGMENT
OF THE CALIFORNIA COURT OF
APPEAL AND SUBSEQUENT ORDERS

The following relevant opinions,
judgments and orders have been omitted
from this appendix because they appear in
appendices to the Petition for Writ of
Certiorari as noted below:

Opinion and Judgment of the
California Court of Appeal
(1st App. Dist., Div. 5),
dated November 20, 1984

Appendix A

Order Denying Rehearing
dated December 10, 1984

Appendix B

Order Denying Hearing in
California Supreme Court,
dated January 23, 1985

Appendix C

Attorney:

No. 84-1513
October Term, 1984

JOHN K. VAN DE KAMP
Attorney General of the
State of California
LAURENCE K. SULLIVAN
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-3653

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Petitioner,

v.

DANTE CARLO CIRAOLO,

Respondent.

I, the undersigned, say: I am a citizen of the United States, am over the age of 18 years, employed in the City and County of San Francisco, and not a party to the subject cause, my business address being 6000 State Building, San Francisco, California 94102.

I have served the within JOINT APPENDIX as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 40 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; and by placing same in separate envelope addressed for and to each addressee named as follows:

Marshal W. Krause
Krause, Baskin, Shell,
Grant & Ballentine
Wood Island, Suite 207
60 E. Sir Francis Drake Blvd.
Larkspur, CA 94939

Leo Himmelsbach
District Attorney
70 W. Hedding Street
5th Floor
San Jose, CA 95110

Pamela H. Duncan
Attorney at Law
Post Office Box 98
Santa Cruz, CA 95063

Clerk, Santa Clara Superior
Court
191 N. First Street
San Jose, CA 95110

Clerk of the Court
California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102

Each envelope was then sealed and with the postage prepaid deposited in the United States mail at San Francisco, California on the 28th day of June, 1985.

There is a delivery service by United States mail at each place so addressed or regular communication by United States mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Francisco, California, June 28, 1985.

Subscribed and sworn to before me
this 28th day of June 1985.

Marilyn J. Chedister
NOTARY PUBLIC IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO, CALIFORNIA.



Elizabeth Aguilera
ELIZABETH AGUILERA